



NJ APPLESEED PILC STATEMENT BEFORE THE NEW JERSEY BOARD OF
HEALTH REGARDING THE PROPOSED TRANSFER OF LICENSE
OF ST. MARY'S HOSPITAL, PASSAIC TO PRIME HEALTHCARE SERVICES,
CN # FR 13-0101-14-01, JANUARY 15, 2014

N. J. Appleseed is a nonprofit legal advocacy center and in the case of nonprofit hospital change of control decisions, we seek to protect the interest of the communities within the service area of the hospital in retaining control of their charitable healthcare asset, and ensuring that the services that are actually retained, or newly provided, by the hospital are the very services that are needed by the residents using the hospital; not necessarily those that bring in more revenue, but in the case of a small community based hospital, like St. Mary's those that should be emphasizing well-being and prevention over acute care treatment.

As a recent article appearing on the Health Affairs blog notes, there is a new business model being touted by academics, policymakers and implicitly, legislators through the ACA (through changes to reimbursement models away from fee-for service) that would transform our delivery system away from hospital-centric sick care to a super outpatient model that will emphasize community based care. This dramatic change would require the hospital industry to aggressively "right size" while moving the focus of care away from the four walls of the hospital. St. Mary's Hospital, with most of its licensed beds empty, a large percentage of its Medicaid patients receiving care on an outpatient basis or same day surgery (though it appears

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from the record that there has been a large reduction in outpatient services generally since ownership changed from Passaic Beth Israel), and a relatively large underutilized physical infrastructure and campus, is in an ideal position to implement this “new” model; however, what we know about Prime Healthcare Service it is highly unlikely that the proposed new owner shares that vision.

Nonetheless, it is within this policy context and the legal framework governing the CN process that we offer some brief comments.

Simply put, I understand the CN process to address two fundamental questions: the need for a particular service, including an acute care facility as a whole; and the qualifications of the people delivering that service; that is the track record. Answer to the first question is that the community and residents served by St. Mary’s Hospital need a community based hospital that as its mission states will “respond to the changing healthcare needs of the diverse communities we serve” (Cover Letter dated February 6, 2013, to first “fully comprehensive analysis” of Community Health Needs Assessment prepared by St. Mary’s Hospital, attached hereto). As to the second question, the track record of Prime Healthcare Services, the answer is more troubling.

NJ regulators can mine the file developed by their counterparts in Rhode Island to find the deeply disturbing aspects of Prime’s business model that it is trying to export to several states from California. These include, but are not limited to a pending Medicaid fraud investigation, allegations contained in now three pending lawsuits of upcoding, misuse of the emergency room (the recent whistleblower suit alleging excessive admissions through the emergency department rather than observation), “kidnapping” of patients, rendering unnecessary medical services, use of an out-of-network insurance model, and other abusive, if not illegal practices. Each of these complaints must be carefully scrutinized, and the Department must seriously consider whether

this entity is the right owner for a New Jersey hospital. We know that the California AG has determined not to permit Prime to acquire more hospitals in that state, and while other states desperate for capital to keep financially strapped essential hospitals open have permitted Prime to come in, if we do so in New Jersey we can only do so with very strict conditions to ensure that they do not further disrupt our hospital system that is the most expensive in the country, and some would say quite dysfunctional in some parts of the State.

If we had alternatives here (i.e., the “what if the Board of Saint Mary’s did X,” which I will discuss in the context of CHAPA tomorrow), I would say this CN application should NOT be approved. But given the approximately \$40m in long term debt, the approximately \$22 million in Medicaid and Medicare liabilities, the Hospital’s need of money to improve its electronic medical records system and fix its elevators, and the unmet healthcare needs of the community as evidenced in the Community Needs Assessment mentioned above, this may be the only option. That is, unless the state is willing to its regulatory power and the fact that the state taxpayers have guaranteed the bonds financing the Transformation Grants loaned St. Mary’s to come up with another solution, it seems that Prime is the only option to keeping this Hospital open.

Accordingly, NJ Appleseed believes that the State must use its regulatory authority at this juncture to make sure that Prime implements the right business model—one that, as stated in the CN application, would put St. Mary’s “in a position to collaborate with other hospitals in order to meet regional health care needs in the most optimal manner” and to provide “high quality, low cost” care. (Bates No.4659).

Toward that end, we request that the Commissioner condition the transfer of license to Prime Healthcare Services on the following conditions. Now, at this time, when Prime is

requesting the State to grant it the privilege of operating a hospital in our State is the time to act, not later. And the deficiencies both in the conditions imposed on Meadowlands Hospital, Hoboken University Medical Center and Christ Hospital, and the enforcement of those conditions must be heeded when designing the appropriate conditions here.

First, Prime must maintain this hospital as an acute care facility for 10 years not 5, but not necessarily as a hospital that emphasizes surgery, and other high tech procedures, and the hospital must be “right sized”. The residents of Passaic County and Bergen do not need a 269 licensed bed hospital, including 213 medical/surgical beds to make the regional health system work. The Department must do a serious analysis of “need” here and come up with a number. Residents should not be faced with keeping a 269 bed hospital open or closing it. They need a hospital with a fully functioning emergency department and one that brings back the outpatient clinics that have been shed over the years. You decide the right number—do not leave that up to Prime.

Second, Prime must be required to assume and continue each of the current commercial insurance contracts including Medicaid managed care contracts that are in effect at the time of sale, for at least 18 months after licensure.

Third, upon transfer of St. Mary’s to Prime, and for the next five years thereafter Prime shall not modify the charge master for St. Mary’s to increase any rate more than 10% of the charge in effect at the time of sale.

Fourth, If Prime provides notice to terminate any insurance contract at any time, or imposes charges at least 10% above the statewide average, it may be ordered to pay rebates or subject to other appropriate remedies to be determined by DOBI and DHSS.

Fifth The Hospital must maintain financial transparency with the same disclosure requirements imposed on New Jersey nonprofit facilities, providing all information that is currently provided on IRS Form 990.

Sixth The Department must monitor the \$30 million in capital improvements that have been promised and ensure that it is not only going into new equipment to support highly technical interventions and buying specialists from other hospitals. State must also monitor all money coming into the hospital and out of the State into the pockets of investors, including requiring the terms of any sale-leaseback agreement if employed by Prime to finance this transaction and/or the operation of the Hospital. Prime is clearly purchasing this Hospital with borrowed funds. The public needs to know the terms and expected rate of return of those loans.

Seventh, Prime must be forced to create a local board with full legal responsibility for operating the Hospital. The current application states that the local board is advisory in nature and that is not sufficient. Board members, here in NJ, must have full fiduciary responsibility as hospital board members. They cannot defer to Prime's Board in California.

Other conditions require maintaining staffing to ensure that nurse/patient ratios that are sufficient to ensure quality prevail, and that the hiring of appropriately certified or experienced professionals is undertaken—no interns or giving new graduates supervisory functions, as Prime has been known to do in California. Additionally, Prime must maintain St. Mary's charity care policy and the Department must establish a meaningful community advisory group that is not dominated and controlled by the hospital.

Lastly, NJ Appleseed respectfully requests that the Department take a real look at what services need to be provided at this facility to meet the community needs as articulated in the Community Needs Assessment and what not to do. It is the Department's obligation under the

CN not to merely accept the allegations of the applicant but to make its own findings on the impact this transaction will have on other urban hospitals, primarily St. Joe's in Paterson. This may mean a decision to terminate St. Mary's under volume but high quality cardiac surgical program, and conversely a requirement to bring back inpatient psychiatric beds, and increase obstetric and pediatric beds. In this context, it should be noted that of the 554 doctors who have privileges at St. Mary's only 20 accept Medicaid (Bates No. 4666) In any case, the Community Needs Assessment undertaken by St. Mary's from 2008-2010 must be the lodestar in this decision and must guide the Department in determining what services must be offered at the hospital and what services should be terminated.

I will end on the call for a monitor that is authorized under CHAPA to monitor all practices of the hospital (especially emergency room use, pricing, coding, billing patients and waiving of co-pays), and not just charity care, to ensure that Prime saves St. Mary's on the terms desired by the community, and not Prime executives and investors. Passaic residents do not need more high tech equipment used to perform unnecessary MRIs, CAT scans and other revenue generating procedures with little health value, nor the recruitment of specialists as Prime has done in other hospitals that it has purchased. The community needs primary care doctors, mental health services, and emergency room that they can trust to treat them appropriately, and an operator that will fulfill the very humane and catholic mission of St. Mary's that sees health care as a human right and not an economic commodity.

Thank you for the opportunity to express NJ Appleseed's thoughts on this proposed transfer of license.

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